MULTIMEDIA UNIVERSITY

STUDENT IDENTIFICATION NO

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FINAL EXAMINATION

TRIMESTER 1, 2022/2023 (TERM ID 2210)

BBL3614 – COMPANY LAW & SECRETARIAL PRACTICE

(All sections / Groups)

10th February 2023
9.00 a.m. – 12.00 p.m.
(3 Hours)

INSTRUCTIONS TO STUDENT

1. This Question paper consists of 3 pages with 4 Questions only. (Excluding the Cover Page.)

2. Attempt ALL **FOUR (4)** questions. All questions carry equal marks and the distribution of the marks for each question is given.

3. Please write all your answers in the Answer Booklet provided.

QUESTION 1 (25 MARKS)

(a) Lord Esher in Barnett, *Hoares & Co v. South London Tramways Co* (1887) 18 QBD 815 regarded a secretary of a company as *'mere servant'* where his position was that *'he is to do what he is told, and no one can assume that he has any authority to represent any at all'*.

Based on the above statement, discuss **FIVE (5)** duties of a company secretary.

(15 Marks)

(b) Messy is a company secretary of Jaya Holding Bhd. The company gave to the director of the company, Heddy, a loan of RM500,000.00 to purchase a piece of land in Port Dickson. Messy was against the conduct of the directors. She insists on resigning before the expiry of her term of appointment. However, the company's constitution was silent about this matter, and none of the directors was available to be notified. Advise Messy.

(10 Marks)

QUESTION 2 (25 MARKS)

(a) Discuss the liabilities of a company secretary.

(5 Marks)

(b) Janshek Sdn. Bhd. was recently incorporated. The company wishes to appoint an auditor. The board of directors seek your advice on what qualifications auditors need and the procedure for their appointment.

Advise them.

(10 Marks)

(c) Big Heart Bhd. is a public listed company. Husin was interested to purchase the share of Big Heart Bhd. He made a loan of RM500,00.00 from Bank Public Bhd. The board of directors decided that the company would provide a piece of company's land as a security for his loan.

Advise the directors on the rules of maintenance of share capital particularly regarding financial assistance by the company.

(10 Marks)

Continued.....

QUESTION 3 (25 MARKS)

(a) Dynasty Sdn. Bhd. ('Dynasty') is a registered company which provides hiking equipment for hire at Mount Kinabalu. The directors of Dynasty are Alison, Bob and Chris. Alison is responsible for the day-to-day running of the company though she has never been appointed as a managing director.

Last year, Dynasty entered into a 5 year contract with Diamond Sdn. Bhd. ('Diamond') to purchase RM10,000.00 worth of branded hiking accessories. Alison owns 36% of the shares in Diamond. Bob knows that Alison has an interest of some kind in Diamond but does not ask for any details and does not mention to Chris. Dynasty is dissatisfied with the equipment provided by Diamond Sdn. Bhd. Dynasty finds out that hiking accessories are fake, overpriced and caused dangerous accidents to hikers. As a result of this, Dynasty wishes to discontinue the contract. Advise Dynasty Sdn. Bhd.

(15 Marks)

(b) Zee Sdn. Bhd. was registered in 2020. Allen and Mike are its only shareholders and directors. Zee's constitution provides that Clara is to be Zee's solicitor. Clara is Mike's wife, but after marriage difficulties they have recently separated. Clara has just received a letter from Zee stating that her services are no longer required. Advise Clara.

(10 Marks)

QUESTION 4 (25 MARKS)

Michael, Joe and Peter are directors and shareholders of New Cyber Property Developments Sdn. Bhd. (NCP), a property development company, which owns and operates a tavern. Michael and Joe are brothers. Joe and Peter are friends and partners in an accounting firm. Michael is an unemployed artist and sole parent of three young children. The total number of issued shares in NCP is 6000 ordinary shares. Each shareholder has 2000 shares. All the shares are fully paid.

NCP has been very successful but not paid any dividends to its members for the last two years. Profits have instead been invested in further development projects. Michael's wife has recently died and he is very short of money to look after his family. He approaches Joe and Peter and asks them to consider whether NCP could begin to pay dividends again to its members. Joe and Peter refused to consider Michael's request as it would upset the "long- term goals of NCP". Michael is upset by this response and announces that he wants to sell his shares. Joe and Peter refuse to buy him out and demand that Michael resigns as a director because he has lost his objectivity. Michael resigns reluctantly.

Continued.....

He asks to see NCP's most recent set of financial statements. Joe and Peter refuse to provide the information. Michael discovers accidently that NCP has been paying large "management fees" to Joe and Peter's accounting firm.

Michael consults you and he wants to know:

(a) What action should he bring against Joe and Peter? What factors should he take into account in making this decision?

(20 marks)

(b) Discuss the remedies available.

(5 marks)

End of Paper